

\*\* Filed \*\*  
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U.S.D.C., Eastern District of New York

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ETAN LEIBOVITZ,  
Plaintiff,  
v.

NEW YORK ASSISTANT ATTORNEY GENERAL NICOLE )  
PROCIDA; NEW YORK STATE COURT OFFICERS )  
MICHAEL ZEBRO and KENNETH COY; NEW YORK SRT )  
COURT OFFICERS JOHN DOES 1-10; QUEENS ASSISTANT)  
DISTRICT ATTORNEYS PHYLLIS WEISS; NEW YORK )  
STATE COURT JUDGE JOHN KATSANOS. )

Defendants )

Case No.: 2024 CV 4779  
(AMD)(LB)

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**DECLARATION OF PLAINTIFF ETAN LEIBOVITZ**

**PLAINTIFF ETAN LEIBOVITZ** declares under penalty of perjury and in accordance with 28 U.S.C. § 1746 as follows:

1. I am the plaintiff in the above-entitled case.
2. I have personal knowledge of the following facts and circumstances set forth herein, and, if called as a witness, I could and would competently testify thereto.

**Direct Evidence: Plaintiff Etan Leibovitz's November 15<sup>th</sup>, 2022 Audio File (ECF No. 56-6 Exhibit D)**

3. My November 15<sup>th</sup>, 2022 Audio File (ECF No. 56-6 Exhibit D) constitutes direct evidence of the events that transpired on November 15<sup>th</sup>, 2022 with respect to my false arrest in Queens Civil Court.

4. At approximately 9:10 AM on November 15<sup>th</sup>, 2022, I appeared in Queens Civil Court, and I made my way up to the third floor with my computer bag hanging over my shoulders. Upon my arrival at the third-floor hallway just outside Courtroom 302, I promptly activated my recording application to document events as they unfolded, which was in my computer bag the whole time, to document events as they unfolded throughout the day. The recording began at 9:15 AM while I was in the hallways in Queens Civil Court, outside courtroom 302 and continued uninterrupted until the recording application's memory was exhausted, resulting in a total recording duration of 14 hours and 20 minutes ("Etan Leibovitz's November 15<sup>th</sup>, 2022 Audio File"). Upon my arrest, Defendants Kenneth Coy and Michael Zebro transported my computer bag with them. During this time, the recording application within the bag continued to operate, capturing the events as they unfolded. See ECF No. 56-6 Exhibit D 5. The recording application captured the following events in Etan Leibovitz's November 15th , 2022 Audio File:

<u>Location</u>	<u>Timestamp</u> <u>November 15<sup>th</sup>, 2022 File</u>
a. Queens Civil Court's hallway on the third floor by Courtroom 302	0:00 - 42:17
b. Inside Courtroom 302	42:18 - 50:51
c. Arrest in the hallways third floor and transported to the first floor holding cell	50:52 - 54:14
d. Inside the holding cell on the first floor in Queens Civil Court	54:15 - 2:15:02
e. Being transferred by SRT Officers from Queens Civil Court to the 102 <sup>nd</sup> Precinct	2:15:03 – 3:38:29
f. Inside the office of the 102 <sup>nd</sup> Precinct	3:38:30-14:20:14

5. ECF No. 56-6 Exhibit D is a true and complete copy of Etan Leibovitz's November 15<sup>th</sup>, 2022 Audio File capturing what happened to me on November 15<sup>th</sup>, 2022.

6. Under Fed. R. Civ. P. 72(a), a district judge must "modify or set aside any part of the [magistrate judge's] order that is clearly erroneous or is contrary to law." An order is "**clearly erroneous if, based on all the evidence, a reviewing court 'is left with the definite and firm conviction that a mistake has been committed,'**" *Storms v. United States*, No. 13-CV-811, 2014 WL 3547016, at \*4 (E.D.N.Y. July 16, 2014) (quoting *United States v. Murphy*, 703 F.3d 182, 188 (2d Cir. 2012)), and "is 'contrary to law' when it fails to apply or misapplies

**relevant statutes, case law, or rules of procedure," Weiner v. McKeefer, No. 11-CV-2254, 2014 WL 2048381, at \*3 (E.D.N.Y. May 19, 2014) (citation omitted).** A Rule 72(a) appeal is subject to "a highly deferential standard of review" and "imposes a heavy burden on the objecting party." Regan v. Daimler Chrysler Corp., No. 07-CV-1112, 2008 WL 2795470, at \*1 (E.D.N.Y. July 18, 2008) (citation omitted).

7. The term "**transport**" in **Black's Law Dictionary** is generally defined as:

**Transport** (v.) – To carry or convey from one place to another. This can apply to people, goods, or services being moved, often by vehicle, aircraft, ship, or other means like walking by foot, meaning they can travel or be moved from one place to another by walking or running. This is a fundamental form of transportation, used for both short and longer distances. The movement of people or goods from one place to another. The noun form of "transport" refers to the act or means of transportation.

### **Defendant Kenneth Coy's Voice**

8. At 9:55:21 AM, corresponding to the 40:21 timestamp, Defendant Kenneth Coy appeared opening the door to Courtroom 302. His voice is clearly audible, and he identifies himself during the time period spanning 40:39 to 42:02 (9:55:39 AM to 9:57:02 AM). See ECF No. 1 ¶¶ 143; see also Etan Leibovitz's Declaration, ECF No. 55 ¶¶ 88. All timestamps referenced herein correspond to the November 15<sup>th</sup>, 2022 audio recording submitted by Etan Leibovitz, filed as ECF No. 56-6, Exhibit D.

### **Breakdown of Timestamps**

9. At 9:57:18 – 10:05:51 AM, corresponding to the 42:18 to 50:51 timestamp, Aaron Reichel Defendants John Katsanos, Kenneth Coy, Michael Zebro and I were present inside Courtroom #302.

10. At 10:05:52 – 10:09:14 AM, corresponding to the 50:52 - 54:14 timestamp, I am unlawfully arrested in the hallway on the third floor in Queens Civil Court and subsequently transported to a holding cell on the first floor.
11. At 10:09:15 – 11:30:02 AM, corresponding to the 54:15 – 2:15:02 timestamp, I am unlawfully confined inside the holding cell on the first floor in Queens Civil Court.

**Etan Leibovitz's November 15<sup>th</sup>, 2022 Audio File Timestamp 2:15:03 – 3:38:29**

**Defendants John Does #1-10 Arrival to Queens Civil Court**

12. At 11:19 AM, corresponding to the 2:04:00 timestamp, Defendants John Does #1-10 arrived at the Queens Civil Court for the purpose and “job” of transporting me to the police precinct. They stood just outside the first-floor office where I was being held, within clear earshot of my location.
13. At 11:24:24 AM, corresponding to the 2:09:24 timestamp, Defendant John Doe #2 walked into the office where the holding cell was situated and confronted me, saying, "What's up – I am going to tell you what's going to happen I am going to open this door and you are going to turn around and face the back wall. When I take you out, I'm going to recuff you in my handcuffs. We're going to bring you out to be processed. You want? Dude I am not...You're following what I'm telling you, after that, there's no shield number, so good luck. You're going to turn around and face the wall. Turn around and face the wall."

Defendant John Doe #1 says, “Take it out there, take it out there, take it out there, take it out there, I don’t want him to hear us! We will be right back.”

14. At 11:25:14 AM, Defendant John Doe #2 walked into the office where the holding cell was situated and made the following declaration, “I don’t think there is enough room in there...where is the camera in this place?”

Defendant John Doe #2, “Tonya, we're going to put our weapons away.”

Defendant John Doe #4 , “John and Peter on the top. Me and Derek on the bottom.”

15. At 11:26:27 AM, corresponding to the 2:11:27 timestamp, Defendant John Doe #1 can be heard threatening me, stating, “You are making a big mistake.....you are making a mistake...(2 knocks) cooperate follow the instructions.....or else we are going to come in and this is going to get rough...okay. I am letting you know now a head of time.”
16. At 11:26:40 AM, corresponding to the 2:11:40 timestamp, Defendant John Doe #2 can be heard threatening me, stating,

“I know you are a regular in Civil Court we are not a regular in Civil Court so get ready okay ... You are going to face the wall once I open up this door ... if you don’t face the wall you are **going to have a major fucking problem bro**, back up all the way to the fucking wall, bro. **I am treating you like I am treating a fucking murderer at this point.** Okay all the way to the wall.”

17. The door to the holding cell was then opened, and I was handcuffed with my hands behind my back. My legs were shackled, and a black polyester mask was placed over my head. I was facing the wall and I dont not know which Defendants John Does #1-10 applied excessive force. At 11:27:05, corresponding to the 2:12:05 timestamp, Defendant John Doe #2 can be heard stating, “Now... Take these cuffs off him, guys. You got to take these cuffs off him.” Defendant John Doe #4 responds, “You got a key?” Then Defendant John Doe #1 says, “You got the legs” ..... Defendant John Doe #2, “Put the cuff on first” .....Defendant John Doe #2, “He came through the mags, I am assuming he has nothing on him.”
18. After being confined for approximately 1 hour and 27 minutes in the first-floor holding cell of the courthouse without my consent, at 11:30:02 AM, corresponding to the 2:15:02 timestamp, I was instructed to exit the office and stand against the wall. Defendants John Does #1-10 can be heard yelling, “Coming out. Coming out.”

**Queens Civil Courthouse to Central Booking to 102<sup>nd</sup> Precinct**

19. At 11:36:13 AM, corresponding to the 2:21:13 timestamp, I was transported out of the Queens Civil Courthouse to the waiting New York State Court Vehicle #1, which was parked directly outside the courthouse. Defendants John Does #1–8, along with Defendants Kenneth Coy and Michael Zebro, accompanied me during this transport.
20. At 11:37:07 AM, corresponding to a timestamp of 2:22:07, I was placed in the back seat—center position—of New York State Vehicle #1. Defendants Kenneth Coy and Michael Zebro were seated on either side of me in the back seat. According to AAG Michael Berg’s representation, Court Officers Sean O’Malley and Charles Beck occupied the driver and front passenger seats.<sup>1</sup> At 11:40:12 AM, corresponding to a timestamp of 2:25:12 seconds, New York State Court Vehicle #1 began moving.

**Defendants John Does #1-6 take New York State Vehicle #2**

21. Defendants John Does #1–6 departed in New York State Vehicle #2 as part of a coordinated motorcade transport operation.

**Queens Central Booking Refuses to take Etan Leibovitz**

22. At 11:50:16 AM, corresponding to a timestamp of 2:35:16, New York State Vehicle #1 arrived at Central Booking. My computer bag remained in the vehicle. Central Booking declined to process me.
23. At 12:03:56 PM, corresponding to a timestamp of 2:48:56, New York State Vehicle #1 departed Central Booking and began traveling to the 102<sup>nd</sup> Precinct.

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<sup>1</sup> ECF No. 75 Page 2 ¶ #4

### **Arrival at the 102<sup>nd</sup> Precinct**

24. At 12:08:56 PM, corresponding to a timestamp of 2:53:56, New York State Vehicle #1 arrived at the 102<sup>nd</sup> Precinct. At 2:54:02, Defendants Michael Zebro and Kenneth Coy exited Vehicle #1, entered the 102<sup>nd</sup> Precinct carrying my computer bag, and began discussing the process of booking and processing me at the 102<sup>nd</sup> Precinct.

25. At 12:12:05 PM, corresponding to a timestamp of 2:57:05, Defendant Michael Zebro, while inside the vestibule of the 102<sup>nd</sup> Precinct and in possession of my computer bag, can be heard on a phone call with an individual identified as Doris. During the call, Defendant Zebro states,

“Hey Doris, it’s Zebro. So, we just went to Central Booking, and they told us to go to 102 and they would take him, central booking, and we went to 102. 102 said they are not going to take him... so I guess now we are go to 103 I don’t even ... no they called and our cell is out of service...Hey this is absolutely ridiculous Major, central booking... They just didn’t want to take him they are like ahh oh especially oh yeah we are going to have to voucher ahh stuff – and they are like nah nah we are definitely not doing any of that here... Take him to 102... So they called the 102 and said yeah they have availability, take him to 102. We just hit 102 and they are nah. We are not taking him ourselves take him to 103. So, we still have officer 1, so we still have SRT with us, and they’re fucking shaking their heads too—they’re like, “This is fucking ridiculous.” So... Yeah...That’s what... Yeah, that’s what I said... I know oh man So we are still at 102 we are just sitting”

### **Outside the 102<sup>nd</sup> Precinct “Sidewalk Parking Lot”**

26. At 12:13:59 PM, corresponding to a timestamp of 2:58:59, Defendant Michael Zebro opened the door in the vestibule area and exits the 102<sup>nd</sup> Precinct. He proceeds toward the "sidewalk parking lot" adjacent to the precinct, where New York State Court Vehicles #1 and #2 are parked. Loitering near Vehicle #2 are Defendants John Does #1-6. Inside New York State Court Vehicle #1 are “Court Officers Sean O’Malley and Charles Beck”, and myself. Defendant Michael Zebro remained on the phone with an individual identified as Doris, during which he can be heard stating:

“outside right now. Umm I don’t know I guess we are going to 103. I will keep you updated. All right let me go, yeah, let me go.”

27. At 12:14:17 PM, corresponding to a timestamp of 2:59:17, as Defendant Michael Zebro walks toward New York State Court Vehicles #1 and #2 while carrying my computer bag, Defendant John Doe #1 can be heard laughing.
28. At 12:14:32 PM, corresponding to a timestamp of 2:59:32, Defendant Michael Zebro arrives back at the two New York State Court Vehicles, #1 and #2. At that moment, a NYPD officer can be heard asking, “What do you got him for?”
29. From 12:14:34 – 12:25:04, corresponding to a timestamp of 2:59:34 – 3:10:04, Defendants John Does #1-6 and Defendants Michael Zebro and Kenneth Coy can be heard talking while loitering outside the 102<sup>nd</sup> Precinct “sidewalk parking lot”. During this time, I remained seated inside the New York State Vehicle #1.
30. At 12:25:05 PM, corresponding to timestamp 3:10:05, Defendant Michael Zebro places my computer back in the trunk.
31. At 12:29:36 PM, corresponding to timestamp 3:14:36, Defendant John Doe #2 opened the back door on the right side of New York State Court Vehicle #1. Just before removing the mask from my face, Defendant John Doe #2 stated:

**“I got to read you the warning though... Hear me out, if at any point you spit, I am not taking you to the precinct, I am taking you to the hospital. I promise you! Okay! I am going to be a gentlemen and take it off”**

**Etan Leibovitz is transported on foot from New York State Court Vehicle #1 into the 102<sup>nd</sup> Precinct through the entrance facing the intake desk**

32. At 12:44:51 PM, corresponding to timestamp 3:29:51, I was removed from New York State Court Vehicle #1—parked in the “sidewalk parking lot”— and transported on foot into the

102<sup>nd</sup> Precinct, entering through the doorway facing the intake desk. This transport was conducted by Defendants Kenneth Coy, Michael Zebro (who was also carrying my computer bag containing the recording application), and John Does #1 through #6. At 3:30:38-3:30:50, Defendant John Doe #1 can be heard stating, “I promise, I am going to tell them for no one to rape you.”

33. At 12:48:37 PM, corresponding to timestamp 3:33:37, Defendant Michael Zebro could be heard calling “Defendant John Doe # 3 – Johnny”, “Johnny – do you have, do you have Roberto’s number?

**Defendant John Doe #3** “Ahh ...Yeah – umm do you need to call the desk?”

**Defendant Michael Zebro** “Ahh Yeah, tell him to call the desk”

34. **Location:** Inside the 102<sup>nd</sup> Precinct by the entrance facing the intake desk

**Action Taken:** I was unshackled and uncuffed.

**Officers Present:** Defendants Michael Zebro, Kenneth Coy, John Does #1-5 including Johnny

At 12:49:15 PM, corresponding to timestamp 3:34:15, Defendant John Doe #2 states to me, “Alright, pick up one leg for me,” followed by the following colloquy:

**Etan Leibovitz:** “Which one?”

**Defendant John Doe #2:** “This one.”

**Etan Leibovitz:** “Left.”

**Defendant John Doe #2:** “Yup... alright left”

**Etan Leibovitz:** “Right.”

**Defendant John Doe #2:** “One second ...alright right leg... okay side pocket”

**Defendant Kenneth Coy:** “I got it”

**Defendant John Doe #2:** “You want to turn around.”

35. During this exchange between Defendant John Doe #2 and me, the sound of shackles and handcuffs can be heard, as both the shackles from my legs and the handcuffs from my wrists are taken off.

#### **102<sup>nd</sup> Precinct Entrance to Room 114 to Holding Cell**

36. **Location:** Inside the 102<sup>nd</sup> Precinct by the entrance facing the intake desk

**Action:** I was transported from the intake entrance of the 102<sup>nd</sup> Precinct to Room 114 in order to be placed in a holding cell.

**Required:** Keys to the holding cell in Room 114

**Officers Involved:** Defendants Michael Zebro, John Does #1-5 including Johnny

**Transport Details:** I was transported from inside the 102<sup>nd</sup> Precinct, by the entrance facing the intake desk, to Room 114—located approximately 15 feet away on the same floor, on the left side. Upon arrival, the door was opened and I was placed in a 9-foot by 6-foot holding cell already occupied by three other recently arrested individuals. I remained in this holding cell until approximately 8:00 PM, leaving only twice—once to be fingerprinted and once to use the restroom.

37. At 12:50:07 PM, corresponding to timestamp 3:35:07, Defendant John Doe #2 can be heard stating “Alright, just get the keys, we will put him in the cell”. Another individual then responds, “Got it”. At 12:50:13, corresponding to timestamp 3:35:13, the door to Room 114 is opened, and Defendants Michael Zebro, John Does #1-5, including Johnny, proceed to transport me into Room 114 and place me inside the holding cell. At 12:50:22 PM, corresponding to timestamp 3:35:22, the sound of the cell door closing and locking is clearly audible. At 12:50:29 PM, corresponding to timestamp 3:35:29, Defendant John Doe #2 can be heard asking, “This is his bag?” to which Defendant Michael Zebro responds, “Yeah”.
38. At 12:50:58 PM, corresponding to timestamp 3:35:58, Defendant John Does #2 can be heard saying to a NYPD officer “They need you to help them (Defendants Michael Zebro and Kenneth Coy) they have never processed before so you can help them out. I have to go back to Supreme Court to do another job.... Any bullshit with him call me..... Well, you need to transport me. You need to transport for all that shit.... If he's acting up. If he's just like this. I got to say, we can make it.”
39. At 12:51:41 PM, corresponding to a timestamp 3:36:41, Defendants John Does #1-5, including Johnny, are in the process of exiting the 102<sup>nd</sup> Precinct. Defendants Michael Zebro and Kenneth Coy remain inside to complete paperwork and process the vouchering of my personal belongings and evidence. At this time, Defendant Michael Zebro can be heard saying to Defendants John Does #1-5, including Johnny, “Alright, thanks.”

40. At 12:52:25 PM, corresponding to timestamp 3:37:25, Defendant Kenneth Coy can be heard speaking on the phone, stating, “Okay ...okay the guy is in the cell ..okay... I will keep you posted.”

**Defendants Kenneth Coy and Michael Zebro enter an office inside the 102<sup>nd</sup> Precinct**

41. At 12:53:23 PM, corresponding to timestamp 3:38:23, an NYPD officer from the 102<sup>nd</sup> Precinct can be heard, from inside the office, instructing Defendants Michael Zebro and Kenneth Coy to “come on down good sir”.

42. At 12:53:28 PM, corresponding to timestamp 3:38:28, Defendants Michael Zebro and Kenneth Coy can be heard entering the 102<sup>nd</sup> Precinct office. Defendant Michael Zebro is audibly heard stating “This is all his shit where do you want —” At 12:53:31 PM, corresponding to timestamp 3:38:31, NYPD Officer Babol responds to Defendant Michael Zebro, “Are you going to voucher those?”

**The SRT Team Was Actively Involved in Etan Leibovitz’s Transport from Queens Civil Court to the 102<sup>nd</sup> Precinct**

43. Defendants John Does #1-10 were actively involved in the following actions on November 15<sup>th</sup>, 2022:

- a. The application of physical restraints on my person, including handcuffs, leg shackles, and a mask while I was in Queens Civil Court, 1<sup>st</sup> floor office;
- b. Assisting in removing me from the 1<sup>st</sup> floor holding cell/office, transporting me out of Queens Civil Court into the New York State Vehicle #1.

44. Defendants John Does #1-6 were actively involved in the following actions on November 15<sup>th</sup>, 2022:

- a. Following New York State Vehicle #1 in New York State Vehicle #2 as part of the coordinated transport operation;

- b. The removal of the mask from my face while New York State Court Vehicles #1 and #2 were parked in the "sidewalk parking lot" adjacent to the 102<sup>nd</sup> Precinct;
- c. Transporting me to the 102<sup>nd</sup> Precinct from Central Booking and physically assisting in removing me from New York State Court Vehicle #1 and transporting me into the 102<sup>nd</sup> Precinct;
- d. The removal of the physical restraints on my person—handcuffs and shackles—inside the 102<sup>nd</sup> Precinct, near the entrance facing the intake desk;
- e. Transporting me from the entrance at the 102<sup>nd</sup> Precinct to Room 114 and placing me inside the holding cell

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Queens, New York

May 28<sup>th</sup>, 2025

*Etan Leibovitz*

Etan Leibovitz, Pro Se